

DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY)	ADMINISTRATIVE
WASHINGTON STATE DEPARTMENT OF)	ORDER # <u>01WQH-Q-2168</u>
TRANSPORTATION (WSDOT))	
FOR THE USE OF HERBICIDES TO)	
CONTROL NON-NOXIOUS WEEDS ON WSDOT)	
PROPERTIES AND PROJECTS WITHIN)	
THE STATE OF WASHINGTON)	

The Washington State Department of Transportation (WSDOT) submitted a request to the Department of Ecology (Ecology) for the purpose of applying herbicides to waters of the state at the following WSDOT owned or managed sites to control non-noxious weeds at:

- construction sites;
- wetland mitigation sites;
- right-of-ways; and
- other WSDOT properties.

Pursuant to the 9th Circuit Court's decision in *Headwaters, Inc. v. Talent Irrigation District*, applicants who apply pesticides to waters of the United States must obtain a National Pollutant Discharge Elimination System (NPDES) permit. This order/permit is a short-term water quality standards modification. It is not an NPDES permit and does not authorize the discharge of pesticides to waters of the United States.

All applicants who apply pesticides to waters of the U.S. are also required to submit NPDES applications for their pesticide applications. NPDES application forms will be provided by Ecology and must be submitted to Ecology no later than 30 days from issuance of this Administrative Order (Order). In addition, any application of pesticides to waters of the state shall comply with the conditions listed below in this Order.

This Administrative Order (Order) is issued under the provision of Chapter 90.48 Revised Code of Washington (RCW) and Washington Administrative Code (WAC) 173-201A-110.

WSDOT and WSDOT Contractors, herein called the applicator(s), shall comply with the following conditions during any application of Rodeo (glyphosate), and registered surfactant(s) to waters of the state.

A. GENERAL REQUIREMENTS

1. This Order is valid for a period of not more than one year after the signature date on the last page of this Order.
2. Applicator(s) operating under this Order must comply with all herbicide label instructions. If application conditions in this Order differ from the label, there

must be compliance with the more stringent of the requirements. However, no condition in this Order or any amendment to the Order, shall reduce the requirements on the herbicide label.

3. Applicator(s) must keep a copy of this Order in their possession during all herbicide applications.
4. Failure to comply with the legal requirements referred to in this Order, resulting in loss of critical, emergent vegetation, will require compensation by the applicator. This may include replanting and monitoring of planting success.
5. If there are any questions or problems regarding this Order call one of the following contacts within Ecology:

Allen Moore	(360) 407-6563	FAX	(360) 407-6426
Loree' Randall	(360) 407-6068	FAX	(360) 407-6902

B. DEFINITIONS

1. **Applicator(s)** – WSDOT employee, WSDOT contractor or whomever WSDOT has given authorization to treat their site under this authorization.
2. **Non-targeted Plant(s)** – Plant(s) located outside of the treatment area or those not intermixed with plant species to be controlled.
3. **Normal entry point** – The area where a walkway or pathway enters the property and is used to access or cross over a site.
4. **Publicly Accessible Areas** - Known public access points or areas that the applicator(s) knows that the public uses, along right-of-ways and any beach or access point to water.
5. **Treatment Area** – The physical location of the herbicide application (including anticipated movement of the herbicide in lakes, ponds, streams and wetlands) to control the targeted plant species.
6. **Wetlands** – means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, marshes, bogs and similar areas. This includes wetlands created, restored, enhanced or preserved as part of a mitigation procedure action. This does not include constructed wetlands for the following surface waters of the state intentionally constructed from non-wetland sites; irrigation and drainage ditches; grass-lined swales; detention facilities; canals; agricultural detention facilities; farm ponds; sewage treatment lagoons; and landscape amenities.

However, wetlands, as permitted by the appropriate authority, may include those artificial wetlands intentionally created from non-wetlands areas to mitigate loss of wetlands. These artificial wetlands created for mitigation are not considered wetlands of the state until excavation is completed and water is allowed to freely occupy the site. At that point, it is assumed that the hydrology is in place and will support the wetland functions and values intended by a wetland mitigation plan.

C. REPORTING & RECORD-KEEPING REQUIREMENTS FOR THE APPLICATOR

1. At least 24 hours prior to treatment, the applicator(s) shall, provide the appropriate Ecology regional office (numbers below) a reasonable estimate of the time, the exact location of treatment, and an emergency telephone number where the applicator can be reached. A message by voice mail or FAX will suffice for this condition. If the applicator(s) determines that the spraying must occur and that the 24-hour notice requirement will not be met, the applicator(s) may request a verbal variance from the appropriate Ecology regional office.

Central Regional Office, Yakima	(509) 575-2490	FAX (509) 575-2809
Eastern Regional Office, Spokane	(509) 456-2926	FAX (509) 456-6175
Northwest Regional Office, Bellevue	(425) 649-7000	FAX (425) 649-7098
Southwest Regional Office, Lacey	(360) 407-6300	FAX (360) 407-6305

2. The applicator(s) must immediately notify the appropriate Ecology regional office (see numbers in C.1) if any of the following concerns or issues arise following a herbicide treatment:
 - an unauthorized discharge of pesticide into state waters, or onto land with a potential for entry into state waters;
 - learns of any person(s) who exhibits or indicates any toxic and/or allergic response as a result of the treatment;
 - learns of any fish or fauna that exhibit stress conditions or die within or downstream of the treatment area; or
 - non-targeted plants outside the treatment area that exhibit stress conditions or die following a herbicide treatment.
3. In the event of an unauthorized discharge of pesticide into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include legal disposal of any spilled material and used cleanup material.
4. The applicator(s) must keep complete application records using WSDOT Pesticide Application Records (see Appendix A). This form also fulfills the Washington Department of Agriculture's (WSDA) reporting requirements. These application records must be completed the same day Rodeo® (glyphosate) and

surfactants are applied and supplied to Ecology and/or WSDA immediately upon request.

D. CHEMICAL REQUIREMENTS

1. Only hand-held and vehicle mounted sprayers but not aerial sprayers are allowed under this Order.
2. Only the following chemicals are approved for use in the spray mix under this Order:
 - a. Rodeo® (Glyphosate), the surfactant LI-700®; and
 - b. Blue spray pattern indicator (HI-LIGHT™) is approved for wicking, back-pack and hand-held power sprayers when applying the herbicide allowed under this order with the following provisos:
 - 1) HI-LIGHT™ shall be applied at the lowest mix rate practical; and
 - 2) Other indicator dyes may be used provided that toxicity test information has been provided to Ecology for review and approval that demonstrates an equivalent or lower toxicity than HI-LIGHT™.

E. TIMING REQUIREMENTS

1. The application of HI-LIGHT, and/or Rodeo® (Glyphosate) and surfactant(s) is limited to periods of time that will not adversely affect threatened and endangered salmonids and other sensitive species. Consult the Washington State Department of Fish and Wildlife (WSDF&W) for identification of critical waters and special seasonal timing restrictions.
2. Apply the herbicide at times so as to minimize public water use restrictions during weekends and avoid public water use restrictions during the opening of fishing season, Memorial Day weekend, Independence Day weekend and Labor Day weekend.
3. Treatment within a ½ mile of areas of potential public use (boat launches, marinas, swim beaches, parks or other public accessible areas) is limited to weekdays. However situations may arise due to weather or other variables that may make it necessary to treat on high use days. If this is the case, the applicator(s) shall obtain a letter of concurrence from the local health department. If the local entity is not willing to take on this responsibility contact the appropriate Ecology Regional office (see C.1).

F. PUBLIC NOTICE REQUIREMENTS FOR THE APPLICATOR (s)

Anytime a portion of the treated area contains a publicly accessible area the following notification procedures must be complied with:

1. Public Notice – Applicator(s) must complete the Herbicide Application - Public Notice Form and deliver a copy to all adjacent properties at least seven (7) days before the initial treatment. The notification may include the schedule for the whole season to avoid duplication. (Public Notice form is provided in Appendix B or it can also be obtained from the Ecology Permit Assistance Center, (360) 407-7037). This same information can also be provided through a letter, flyer or telephone conversation to either the property owner or the renter/lessee.
 - a. Expand the notification area to ½ mile along the shoreline of the treatment area where there are likely to be potable water withdrawals downstream.
 - b. Copies of the notice, letter and a list of names and addresses where they were delivered or documentation of the telephone conversation, person contacted, date, time and any other pertinent information to provide proof of this notification must be retained for seven years.
2. Legal Notice – A legal notice must be published in the legal notices section of a local newspaper of general circulation (or nearest regional paper if a local paper does not exist) for all herbicide applications expected during the time the Order is in effect.
 - a. Publish this notice 1 - 10 days prior to the first herbicide application of the season. The notice must include the:
 - approximate date(s) of treatment;
 - approximate location(s) to be treated;
 - herbicide(s) to be used;
 - posting procedure; and
 - names and phone numbers of the WSDOT contact person and the appropriate Ecology regional office.
 - b. Obtain an original affidavit of the notice from the legal department of the newspaper prior to treatment and retain it for seven years.

G. POSTING REQUIREMENTS FOR THE APPLICATOR(s)

1. Post signs no more than 24 hours prior to an application. Use the Ecology 8 1/2 X 11-inch template provided in Appendix C as a model for the sign for Rodeo® (Glyphosate). The sizes of the signs and the sizes of the letters must be duplicates of or correspond to the templates. To obtain larger templates (24 X 36 inches) contact the Ecology at (360) 407-6563.

- a. If no portion of the treatment site contains a publicly accessible area, signs shall be posted at normal entry points and/or gates into the treatment site.
 - b. If a portion of the treatment area contains a publicly accessible area, then place signs within 25 feet of the shoreline facing both egress and entrance of any boat launch on the waterbody that is within 1/2 mile of any treatment site. Boat launches also include sites commonly used as put-ins and take-outs for small, non-trailerred watercraft. Check the Washington State Parks and Recreation Commission publication "Public Boating Facilities in Washington State," 2nd edition, 1988, to identify public accesses. Reference copies of this publication are available through the Washington State Library, King County Library, Gonzaga University Library and Washington State University Library.
2. The applicator(s) shall use good faith and reasonable effort to ensure that posted signs are secured and remain in place. Signs shall be posted so they are secure from the normal effects of weather and water currents but cause no damage to private or public property. The applicator is responsible for removal of all signs at the end of the treatment season.
3. Post signs in English, and the language, if other than English, commonly spoken by the community that uses the area.

H. ADMINISTRATIVE REQUIREMENTS

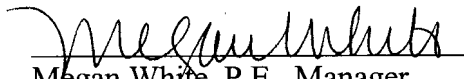
1. The applicator(s) is responsible for complying with all herbicide label directions and restrictions. All persons applying pesticides under this Order should be aware of the following regulations:
 - the pesticide applicator regulations as required by WSDA (RCW 17.21, RCW 15.58, WAC 16-228, and WAC 16-230;
 - public access policy and Hydraulics Code regulations as required by WSDF&W (RCW 75.20.100, WAC 220-110;
 - shorelines regulations as required by the local city or county (RCW 90.58); and
 - all other applicable regulations of the other agencies and local ordinances.
2. If the applicator(s) wishes to vary any of the conditions within this Order due to site specific issues the applicator shall obtain in advance, written permission from the appropriate Ecology regional office (see C.1).
3. Ecology retains continuing jurisdiction to make modifications hereto through supplemental actions if it appears necessary to protect the public interest. This includes protection of wildlife including endangered and threatened species, aquatic, and wetland resources.

4. Failure to comply with the conditions of this Order may result in civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

This Order may be appealed. Your appeal must be filed with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903 within thirty (30) days of your receipt of this Order. At the same time, copies of your appeal must also be sent to the Department of Ecology, Fiscal Section, P.O. Box 47615, Olympia, Washington 98504-7615; and to the Department of Ecology, Water Quality Program, Watershed Management Section, P.O. Box 47600, Olympia, Washington 98504-7600. The notice of appeal shall contain a copy of the order or decision appealed from, and if the order or decision followed an application, a copy of the application.

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Chapter 43.21B RCW.

DATED this 3rd day of May 2001 at Olympia, Washington


Megan White, P.E., Manager
Water Quality Program
Department of Ecology

Pesticide Application Record

Reference (RCW 17.21) A new form shall be filled out each day or each time the Sign Route is changed. This Record Must be Retained for 7 Years. This form must be completed on day of application. WSDOT, Roadside Management Branch, P.O. Box 47358, Olympia, WA 98504-7358. Phone (360) 705-7853.

[illegible]



Commercial Pesticide Application Record

Remember Backflow Protection

Reference (RCW 17.21) A new form shall be filled out each day or time the pesticide tank mixture is modified during the day or each time the Sign Route or County is changed. This Record Must be Retained for 7 Years. This form must be completed on day of application.
WSDOT, Roadside Management Branch, P.O. Box 47358, Olympia, WA 98504-7358. Phone (360) 705-7853.

Contract Number	County	Date of Application	Day of Week	Start _____ Finish _____	<input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> AM <input type="checkbox"/> PM				
SR	Description of Area Treated		Station to Station						
Check Appropriate Boxes									
<input type="checkbox"/> NB <input type="checkbox"/> EB <input type="checkbox"/> Median <input type="checkbox"/> Roadside <input type="checkbox"/> Interchange <input type="checkbox"/> Spot Spray <input type="checkbox"/> Aquatic <input type="checkbox"/> SB <input type="checkbox"/> WB <input type="checkbox"/> Landscaped Area <input type="checkbox"/> Rest Area <input type="checkbox"/> Bridge <input type="checkbox"/> Blanket Spray <input type="checkbox"/> Wetlands <input type="checkbox"/> Shoulder <input type="checkbox"/> Park-n-Ride <input type="checkbox"/> Ramp <input type="checkbox"/> Banded Width									
<input type="checkbox"/> Weeds <input type="checkbox"/> Noxious Weeds <input type="checkbox"/> Disease <input type="checkbox"/> Seed <input type="checkbox"/> Brush <input type="checkbox"/> Insects <input type="checkbox"/> Other List Pest(s):									
Temperature _____ F°(C°) Wind (Direction From) _____ Wind (Range) _____ mph(km/h) <input type="checkbox"/> Sunny <input type="checkbox"/> Broken <input type="checkbox"/> Overcast, No Rain <input type="checkbox"/> Light, Scattered Showers <input type="checkbox"/> Hard Showers									
Material Name	Manufacturer	EPA Reg. No.	Lot Number	Product Per Acre (hectare)	Active Ingredient per Acre (hectare)	Unit	Amount Per Tank	Total Daily Usage	Unit
	Oil (As Carrier)	Units: Ozd= Ounces Dry Lb= Pound Ozl= Ounces Liquid Ga= Gallon Pt= Pint Qt= Quart				g= gram kg=kilogram ml=Milliliter L= Liter			
	Water Source								
No. of Tanks per Day _____ Tank Size _____ Gallons(liters).									
Total _____ Acres(hectares) Treated at _____ gallons(liters) of spray per acre(hectare).									
Equipment Information	Apparatus Number	Calibration Date	Vehicle Speed mph(km/h)	<input type="checkbox"/> Boom <input type="checkbox"/> Other (Specify)					
<input type="checkbox"/> Handsprayer <input type="checkbox"/> Belly Grinder		<input type="checkbox"/> Handgun <input type="checkbox"/> Manifold			<input type="checkbox"/> Tank Mix (Conv.) <input type="checkbox"/> Invert				
<input type="checkbox"/> Backpack		<input type="checkbox"/> Fixed Nozzle <input type="checkbox"/> Nozzle Cluster			<input type="checkbox"/> Injection				
Nozzle Information	Model Number	Pressure PSI(kPa)	Number of Nozzles	Width of Spray Pattern Feet(meter)					
Business Name							Phone		
Address				City		State		Zip Code	
Applicator /Operator Name		Commercial Pesticide Lic. No.		Commercial Operator Signature					
Prime Contactor		Subcontractor		Inspector Name			Phone		
Remarks							Pesticide Sensitivity Registration Applies: <input type="checkbox"/> Yes <input type="checkbox"/> No		
							Contacts		
Division of Emergency Management (1-800-258-5990)									

HERBICIDE APPLICATION - PUBLIC NOTICE

_____ will be treated with aquatic herbicide(s) on/or between _____. Attached is a map of the area(s) to receive treatment.

Notices will be posted at the shoreline and on buoys next to the treatment area(s). They will also be posted at all boat launches on the waterbody within 1.5 miles of the herbicide treatment area and posted at public access areas within 1/4 mile of the herbicide treatment area. Notices of copper treatments will be posted at public access areas.

The herbicide(s) and active ingredient(s) to be used are:

Please obey the following use restrictions within the marked treatment areas:

If this is your only source of domestic or irrigation water, notify the applicator and Ecology by calling the phone numbers listed below.

Herbicides to be used, their water use restrictions, and the dates and locations of treatment(s) scheduled for the remainder of the season are:

For more information contact the applicator at:

This herbicide treatment is regulated under permits issued by the State Department of Ecology Water Quality Program, list regional phone #-see condition G-3. These herbicides have been approved for this purpose by EPA and the State Department of Agriculture.

CAUTION

Glyphosate (Rodeo) will be applied under permit to these waters on _____ to control aquatic vegetation.

**NO WATER USE RESTRICTIONS
ARE IN PLACE**

Treated water may be used for Swimming, Fish Consumption, and Irrigation immediately after treatment.

The herbicide in use is Glyphosate (Rodeo)

For more information contact the Applicator:
Phone:

or Department of Ecology:

Please do not remove this sign until 2 days after application

DANGER

2,4-D will be applied under permit to these waters on _____ to control aquatic vegetation.

For your safety, please obey the following restrictions in this area marked with signs:

1. Do not consume fish from these waters
2. Do not forage or graze treated fields within _____ days
3. Do not harvest hay for 30 days
4. Do not enter the water for _____ days.
wade or swim?

The herbicide in use is 2,4-D

For more information contact the Applicator:
Phone:

or Department of Ecology:

Please do not remove this sign until _____